

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>TOLEKSIS B. TUTORA,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>No. 14-4458</b>
	:	
<b>DIRECTOR SWEENEY and</b>	:	
<b>WARDEN DONATE,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of December, 2014, upon consideration of the “Motion of Defendants Director Sweeney and Warden Donate for Dismissal Under Fed. R. Civ. P. 12(b)(6)” (doc. no. 16) and Plaintiff’s response thereto, it is hereby **ORDERED** that:

- Defendants’ motion to dismiss is **GRANTED**. Plaintiff’s claim based on his fall from the top bunk due to the absence of safety measures is **DISMISSED WITH PREJUDICE**.
- Plaintiff’s medical claim is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiff is given leave to file a second amended complaint as to that claim within thirty (30) days of the date of this Order. If he fails to do so, the claim will be dismissed with prejudice and this case will be closed.

**BY THE COURT:**

/s/ **Mitchell S. Goldberg**

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**MITCHELL S. GOLDBERG, J.**